

Patent Application No. 10/046,295

Inventors: Lyons, et al.

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REMARKS / ARGUMENTS

Applicant provides the following amendment in response the Advisory Action of October 13, 2005. A Request for Continued Examination is enclosed along with the proposed amendments. In the Advisory Action, the Examiner indicated that the proposed amendments were not entered; Applicant has resubmitted the same amendments to the claims and added an amendment to the specification. No Claims were allowed.

The specification has been amended to recite "linear flow rate of about 50 –350 ccm". This amendment is supported by the application as filed (p. 4, line 2; p. 5, line 21- p. 6 line 1 & claim 11). No issue of new matter should arise. Claims 17,18, and 20 have been amended. Claim 25 has been added by this amendment. No new matter has been added by this amendment.

In the advisory action, the examiner noted that "in claim 25, "linear flow rate of about 50 –350 ccm" raises new issues and the issue of new matter. Applicants respectfully submit that no issue of new matter is raised as the language of claim 25 is supported by the application as filed (p. 4, line 2; p. 5, line 21- p. 6 line 1 & claim 11). However, applicant has amended the specification to include "linear flow rate of about 50 – 350 ccm".

The examiner rejected Claims 17, 18 and 20 under 35 USC 112, second paragraph as being indefinite for failing to point out and distinctly claim the subject matter which applicant considers as the invention. The examiner states that those claims "said heating step" lack proper antecedent basis in the claims. Applicants have amended these claims to recite "said heating" rather than "said heating step". Since these claims are dependent upon Claim 11, which recites "heating" as a step in the process, applicants respectfully submit that the Examiner's rejection has been overcome.

The examiner has rejected Claims 11, 17, 18, 19, 23, 24 under 35 USC 103(a) as being unpatentable over Thome '707 in view of either Nishihara '181 or the Chemical Principles reference to show a statement of fact. The examiner states that "Thome suggests the process of

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heating at 550° for about 8 hours a metal oxide, i.e. V_2O_5 , in a flowing gas mixture of air and water vapor at the instantly claimed flow rate and then cooling the metal oxide. The metal oxide appears to have the instantly surface area; in any event the size of the article ordinarily is not a matter of invention (see cols. 5,6). Air itself contains water vapor, i.e. H_2O gas. See Nishihara, col. 2, line 23 and the Chemical Principles reference. The subject matter as a whole would have been obvious to one having ordinary skill in the art at the time of the invention was made to have selected the overlapping portion of the range disclosed by the reference because overlapping ranges have been held to be a prima facie case of obviousness.”

Applicants respectfully traverse. To establish a prima facie case of obviousness, “[t]here must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination.” *In re Oetiker*, 977 F.2d 1443, 1447 (Fed. Cir. 1992). The examiner states that “Thome suggests the process of heating at 550° for about 8 hours a metal oxide, i.e. V_2O_5 , in a flowing gas mixture of air and water vapor at the instantly claimed flow rate and then cooling the metal oxide.” Applicants respectfully traverse. Thome discloses a means to produce vanadium pentoxide in powder form by thermal decomposition of ammonium metavanadate with more than 10% NH_3 in one processing step (col. 1, lines 3-7). Thome discloses a method of producing a pure form of V_2O_5 from precursor, not a method of introducing defects in existing V_2O_5 or other metal oxides for the purpose of preparing a metal oxide for use as a battery cathode with increased capacity, as the presently claimed invention does. Thome discloses the introduction of “fresh air” for the purpose of oxidizing lower valent vanadium oxides to create purer V_2O_5 . Thome does not teach that this “fresh air” will introduce defects in the V_2O_5 which prepares the metal oxide for use as a battery cathode with increased capacity. Rather, Thome teaches a method of preparing purer V_2O_5 , which teaches against the purposefully introduced defects into the metal oxide of the present invention. Thome also requires the presence of ammonium metavanadate in the processing of its process for making V_2O_5 from precursor material, which is also absent from the present invention. Therefore, Thome neither teaches or discloses or fairly suggests a method for

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introducing defects in V_2O_5 or other metal oxides as a means to prepare the material for use as a battery cathode with increased capacity.

What Thome lacks, neither Nishihara nor the Chemical Principles reference provide. The Examiner relies on these references to provide that "Air itself contains water vapor, i.e. H_2O gas." Even if "air" was the same as the claimed combination of O_2 and H_2O of the present invention, changing the "air" of Thome to the O_2 and H_2O of the present invention does not result in a process for introducing defects in existing V_2O_5 or other metal oxides for the purpose of preparing a metal oxide for use as a battery cathode with increased capacity, as the presently claimed invention does. Additionally, there would be no motivation for one skilled in the art to combine the teachings of Thome, which teach how to make a purer V_2O_5 from precursors, with the teachings of either Nishihara or the Chemical Principles reference to arrive at the present invention. One skilled in the art of preparing a metal oxide for use as a battery cathode with increased capacity would not look to a method of preparing purer V_2O_5 as a reference that teaches a method of introducing defects in a metal oxide for the use as a battery cathode with increased capacity. Therefore, applicants respectfully submit that the examiner's rejection of Claims 11, 17, 18, 19, 23, 24 under 35 USC 103(a) has been overcome, and respectfully request reconsideration.

The examiner has rejected Claims 11, 19, & 24 under 35 U.S.C. 103(a) as being unpatentable under Howard, Jr. '477 in view of either Nishihara '181 or the Chemical Principles reference to show a statement of fact. The examiner stated that "Howard, Jr. suggests the process of heating a metal oxide sample, eg. $LiMn_2O_4$ in flowing air at the instantly claimed flow rate. Air contains water vapor or H_2O gas according to Nishihara or the Chemical Principles reference. The metal oxide sample appears to have the instantly claimed surface area; in any event the size of an article ordinarily is not a matter of invention."

Applicants respectfully traverse. To establish a prima facie case of obviousness, "[t]here must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination." Howard teaches an

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intercalation composition and a method for making such. An intercalation composition is one where a molecule (or group) is included between two other molecules (or groups). The host usually has some periodic network. Howard teaches the use of a spinel structure and the molecule included is a trivalent metal cation that adapts to the spinel structure in place of manganese. (see col 3 line 57 – col. 4 line 23). The present invention does not involve introducing a molecule (or group) between two other molecules (or groups), as in Howard. The present invention introduces vacancies into the metal oxide lattice during heating under O_2/H_2O . These vacancies prepare the metal oxide for use as a battery cathode with increased capacity without introducing an additional molecule, as required in the intercalation composition of Howard. Thus, Howard neither teaches nor discloses the present invention. What Howard is lacking is not supplied by either Nishihara nor the Chemical Principles reference provide. The Examiner relies on these references to provide that “Air itself contains water vapor, i.e. H_2O gas.” Even if “air” was the same as the claimed combination of O_2 and H_2O of the present invention, changing the “air” of Howard to the O_2 and H_2O of the present invention does not result in a process for introducing defects in existing V_2O_5 or other metal oxides for the purpose of preparing a metal oxide for use as a battery cathode with increased capacity, as the presently claimed invention does. Additionally, there would be no motivation for one skilled in the art to combine the teachings of Howard, which teach how to make an intercalation composition, with the teachings of either Nishihara or the Chemical Principles reference to arrive at the present invention. Therefore, applicants respectfully submit that the examiner’s rejection of Claims 11, 19, & 24 under 35 USC 103(a) has been overcome, and respectfully request reconsideration.

The examiner has rejected claims 11, 17, 19, 23, and 24 under 35 U.S.C. 103(a) as being unpatentable over Chambers ‘005. The examiner states that “Chambers suggests the process of heating a sample of V_2O_5 at $500^\circ C$ in a stream of air saturated with water vapor, i.e., flowing gas mixture of O_2 and H_2O , at or overlapping the instantly claimed flow rate. See Col. 4, and example 1.” Applicants respectfully traverse. Chambers teaches a method of separating vanadium from vanadium bearing material. Chambers teaches the use of raw material, such as

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“titanium slag” (see example 1) and extracting from it pure vanadium. Chambers neither teaches nor discloses the present invention, a process for preparing a metal oxide for a battery cathode with increased capacity. One skilled in the art of preparing a metal oxide for use as a battery cathode with increased capacity would not be motivated to use a method of extracting V_2O_5 from raw materials as a reference a process for preparing a metal oxide for a battery cathode with increased capacity. Therefore, applicants respectfully submit that the examiner’s rejection of Claims 11, 17, 19, 23, and 24 under 35 USC 103(a) has been overcome, and respectfully request reconsideration.

The examiner has rejected claims 11, 17, 18, 20-22 and 24 under 35 U.S.C. 103(a) as being unpatentable over Shizuka ‘637 in view of either Nishihara ‘181 or the Chemical Principles reference. The examiner stated “Shizuka suggests the process of heating a metal oxide, e.g. Mn_2O_3 , Co_3O_4 , in air to 500°C for 6 hours at a rate of 5°C/min and then cooling the metal oxide to room temperature, ie. ambient, at a rate of 5°C/min. [...] See examples 1-4. Air contains water vapor, ie, H_2O gas. See Nishihara, Col. 2, line 23 and the Chemical Principles reference. Applicants respectfully traverse. To establish a prima facie case of obviousness, “[t]here must be some reason, suggestion, or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination.”

Shizuka teaches an improved intercalation composition and a method for making such. An intercalation composition is one where a molecule (or group) is included between two other molecules (or groups). The host usually has some periodic network. Shizuka teaches the use of a spinel structure and the inclusion of a molecule in a bivalent or trivalent state that adapts to the spinel structure in place of manganese. (see col 3 line 3 – 14). The present invention does not involve introducing a molecule into a spinel structure as in Shizuka. The present invention introduces vacancies into the metal oxide lattice during heating under O_2/H_2O . These vacancies prepare the metal oxide for use as a battery cathode with increased capacity without introducing an additional molecule, as required in the intercalation composition of Shizuka. Thus, Shizuka neither teaches nor discloses the present invention. What Shizuka is lacking is not supplied by

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either Nishihara nor the Chemical Principles reference provide. The Examiner relies on these references to provide that "Air itself contains water vapor, i.e. H₂O gas." Even if "air" was the same as the claimed combination of O₂ and H₂O of the present invention, changing the "air" of Shizuka to the O₂ and H₂O of the present invention does not result in a process for introducing defects in existing V₂O₅ or other metal oxides for the purpose of preparing a metal oxide for use as a battery cathode with increased capacity, as the presently claimed invention does.

Additionally, there would be no motivation for one skilled in the art to combine the teachings of Shizuka with the teachings of either Nishihara or the Chemical Principles reference to arrive at the present invention. Therefore, applicants respectfully submit that the examiner's rejection of Claims 11, 17, 18, 20-22 and 24 under 35 USC 103(a) has been overcome, and respectfully request reconsideration.

Conclusion

In conclusion, Applicants respectfully submit that the Examiner's Office Action has been fully responded to Claims 11 and 17 - 25 are in condition for allowance. In the furtherance of compact prosecution, if a personal or telephone interview would help expedite matters, the Examiner is requested to contact Amy Ressing at 202-404-1558.

Kindly charge any additional fees due, or credit overpayment of fees, to Deposit Account No. 50-0281. Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,



Amy L. Ressing
Reg. No. 45,814

Correspondence:
Naval Research Laboratory, Code 1008.2
4555 Overlook Ave., S.W.
Washington, DC 20375
(202) 404-1558